



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE
(213) 974-1801
FACSIMILE
(213) 626-7446
TDD
(213) 633-0901

ANDREA SHERIDAN ORDIN
County Counsel

August 5, 2011

Agenda No. S-1
08/09/11

TO: SUPERVISOR MICHAEL D. ANTONOVICH, Mayor
SUPERVISOR GLORIA MOLINA
SUPERVISOR MARK RIDLEY-THOMAS
SUPERVISOR ZEV YAROSLAVSKY
SUPERVISOR DON KNABE

FROM: ANDREA SHERIDAN ORDIN 
County Counsel

RE: **2001 Report and Recommendations of the Los Angeles County
Supervisory District Boundary Review Committee**

To assist your Board and the public, the Boundary Review Committee ("BRC") requested that an additional analysis of its recommended redistricting plan be conducted with respect to Section 2 of the Voting Rights Act.

As requested by the BRC, enclosed is a memorandum prepared by Laura Brill, outside redistricting counsel, discussing the Section 2 analysis. This analysis was prepared with the understanding that it would be publicly distributed.

If you have questions concerning this matter, please contact me, Assistant County Counsel Judy W. Whitehurst at (213) 974-1921, or Principal Deputy County Counsel Nancy M. Takade at (213) 974-1891.

ASO:NMT:sc

Enclosure

c: William T Fujioka
Chief Executive Officer

Sachi A. Hamai, Executive Officer
Board of Supervisors

MEMORANDUM

FROM: Laura Brill
DATE: August 4, 2011
RE: Process of Section 2 Analysis

The Los Angeles County Boundary Review Committee passed a motion calling for the BRC's proposed Supervisorial District lines to be subject to further analysis with respect to Section 2 of the Voting Rights Act. In addition, the County has been threatened with litigation if it does not create two districts with more than 50% Latino citizen voting age population.

County Counsel has requested that this firm provide for public distribution additional information regarding Section 2 so that the public will understand the process and issues involved.

The County engaged this firm to provide legal analysis concerning redistricting issues, including Section 2 of the Voting Rights Act. Among other thing, this firm engaged a consultant to assist with an analysis of election results. The consultant reviewed a variety of elections including state-wide and county-wide primary and general elections from 2002-2010, in which at least one known Latino or Spanish-surnamed candidate participated. The consultant also reviewed at large elections within the City of Los Angeles for Mayor and City Attorney in 2001 and 2005. The consultant also reviewed the results of Proposition 54 from 2003, an initiative which concerned collection of racial data and was raised at a BRC meeting. The consultant performed ecological regression analysis concerning these elections using a method that takes into account voter turnout and that is designed to identify which candidates are favored by Latino voters and to measure the extent of so-called "cross-over" voting by non-Latinos for such candidates.

In addition to working with the consultant, this firm also reviewed, among other things, case-law concerning Section 2 and preliminary information provided to the Commission by Professor Justin Levitt and Professor Matt A. Barreto and Mr. Loren Collingwood.

While some have claimed that Section 2 requires the creation of two supervisorial districts within Los Angeles County in which Latinos comprise a majority of the citizen voting age population, cases have regularly analyzed cross-over voting in assessing Section 2 compliance and have upheld electoral districts or at-large voting structures without such a majority where substantial cross-over voting existed.

The United States Supreme Court has stated that Section 2 does not require the creation of the maximum possible number of majority-minority districts. *Johnson v. DeGrandy*, *supra*, 512 U.S. at 1017; 42 U.S.C. § 1973(b) (no right to have members of a protected class elected in numbers equal to their proportion in the population.). As the United States Supreme Court stated recently in *Bartlett v. Strickland*, 556 U.S. 1, 129 S.Ct. 1231 (2009): "[Section] 2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may

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include drawing crossover districts. [citing *Georgia v. Ashcroft*, 539 U.S. 461 (2003)].” *Id.* at 1248 (emphasis added). *See also Cano v. Davis*, 211 F. Supp. 2d 1208, 1242 (C.D. Cal. 2002) *aff’d*, 537 U.S. 1100 (2003) (finding no Section 2 violation as to challenged congressional and state senate seats in Los Angeles County because of substantial non-Latino crossover voting); *Page v. Bartels*, 144 F. Supp. 2d 346, 364-366 (D.N.J. 2001) (reduction in African American voting age population in district from 53% to 27% did not violate section 2 because of significant white crossover voting); *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 986 F.2d 728, 802 *on reh’g*, 999 F.2d 831 (5th Cir. 1993) (upholding at-large district due to cross-over voting); *Nat’l Ass’n for Advancement of Colored People, Inc. (NAACP) v. City of Niagara Falls, N.Y.*, 913 F. Supp. 722, 740-42 (W.D.N.Y. 1994) *aff’d sub nom. N.A.A.C.P., Inc. v. City of Niagara Falls, N.Y.*, 65 F.3d 1002 (2d Cir. 1995) (same).

While the Voting Rights Act is intended to provide a fair and equal opportunity, it has not been construed to guarantee success. *See, e.g.*, 42 U.S.C. § 1973(b) (“nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population”); *Johnson v. De Grandy*, 512 U.S. 997 (1994) (“to define dilution as a failure to maximize in the face of bloc voting . . . causes its own dangers, and they are not to be courted. . . . [R]eading § 2 to define dilution as any failure to-maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose. . . . Failure to maximize cannot be the measure of § 2.”); *Gingles*, 478 U.S. at 63 (focusing on opportunity to elect).

It appears clear based on publicly available information that Latinos actively participate in the political process in Los Angeles County and have achieved substantial electoral success. The County Sheriff and the Assessor are both Latino. The Mayor of the City of Los Angeles, with a population of approximately 4 million people, is Latino, as is the former two-term City Attorney. Latinos have prevailed within in Los Angeles County in state-wide elections. Latino candidates have frequently run for judicial office in Los Angeles, often with success. Proposition 54, which was generally opposed by minority groups including Latinos lost countywide.

These electoral achievements and others are consistent with the presence of substantial non-Latino cross-over voting in Los Angeles County. As a result of substantial cross-over voting, Latino candidates of choice are regularly able to achieve electoral success in Los Angeles County as a whole and in areas such as BRC-recommended SD4, even without a 50% Latino citizen voting age majority.

The Board has also been provided with preliminary reports by Professors Levitt and Barreto. These preliminary reports omit, among other things, a variety of pertinent races within the last decade. An additional report provided by Professor Barreto on August 1, 2011 confirms the presence of substantial cross-over voting in elections his earlier report had omitted.